

# EXHIBIT 5

1

1 UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
2 -----X  
3 THE AUTHORS GUILD, INC., et al.,

4 PLAINTIFFS,

5 -against- Case No:  
6 05CV8136 (DC)

7 GOOGLE INC.,  
8 DEFENDANT.  
9 -----X

10 DATE: January 4, 2012

11 TIME: 1:05 P.M.

12  
13  
14 DEPOSITION of a Plaintiff, BETTY MILES, taken  
15 by the Defendants, pursuant to a Notice and to the  
16 Federal Rules of Civil Procedure, held at the offices of  
17 MILBERG, LLP, One Pennsylvania Plaza, New York, New York  
18 10119, before Deborah Garzaniti, a Notary Public of the  
19 State of New York.

20  
21  
22  
23  
24  
25  
DIAMOND REPORTING, INC. - info@diamondreporting.com  
718.624.7200

1

3

1 FEDERAL STIPULATIONS

2  
3 IT IS HEREBY STIPULATED AND AGREED by and between  
4 the counsel for the respective parties herein that the  
5 sealing, filing and certification of the within  
6 deposition be waived; that the original of the  
7 deposition may be signed and sworn to by the witness  
8 before anyone authorized to administer an oath, with the  
9 same effect as if signed before a Judge of the Court;  
10 that an unsigned copy of the deposition may be used with  
11 the same force and effect as if signed by the witness,  
12 30 days after service of the original & 1 copy of same  
13 upon counsel for the witness.

14  
15  
16 IT IS FURTHER STIPULATED AND AGREED that all  
17 objections except as to form, are reserved to the time  
18 of trial.

19 \* \* \* \*

20  
21  
22  
23  
24  
25  
DIAMOND REPORTING, INC. - info@diamondreporting.com  
718.624.7200

3

2

1 A P P E A R A N C E S:

2  
3 MILBERG, LLP.

4 Attorneys for the Plaintiffs  
5 One Pennsylvania Plaza  
6 New York, New York 10119  
7 BY: (NOT PRESENT)

8 BONI & ZACK, LLC.

9 Attorneys for the Plaintiffs  
10 15 St. Asaphs Road  
11 Bala Cynwyd, Pennsylvania 19004  
12 BY: MICHAEL J. BONI, ESQ.

13 DURIE TANGRI, LLP.

14 Attorneys for the Defendant  
15 217 Leidesdorff Street  
16 San Francisco, California 94111  
17 BY: JOSEPH C. GRATZ, ESQ.

18 ALSO PRESENT:

19 Anita Fore from The Authors Guild

20  
21  
22  
23  
24  
25  
DIAMOND REPORTING, INC. - info@diamondreporting.com  
718.624.7200

2

4

1 B E T T Y M I L E S, called as a witness, having been  
2 first duly sworn by a Notary Public of the State of New  
3 York, was examined and testified as follows:

4 EXAMINATION BY

5 MR. GRATZ:

6 MR. GRATZ: Mark this as Miles Exhibit 1,  
7 please.

8 (Whereupon, the aforementioned document was  
9 marked as Miles Exhibit 1 for identification as of this  
10 date by the Reporter.)

11 Q. Please state your name for the record.

12 A. Betty Miles.

13 Q. What is your address?

14 A. 3306 Wake Robin Drive, Shelburne, Vermont  
15 05482.

16 Q. Good afternoon, Ms. Miles.

17 A. Good afternoon.

18 Q. How are you?

19 A. Fine. Thank you.

20 Q. So what has been placed in front of you  
21 is marked as Exhibit 1.

22 MR. BONI: Let's put that before her so it is  
23 official.

24 Q. Ms. Miles, are you appearing here today  
25 as a result of your Counsel getting this notice?

DIAMOND REPORTING, INC. - info@diamondreporting.com  
718.624.7200

4

1 **A. Yes.**

2 **Q.** So I will ask while we are here today, I  
3 want to have a conversation with you, but she also has  
4 to write down everything that we are saying. We should  
5 not talk over each other. We should say yes and no  
6 rather than nodding.

7 **A. Okay, yes.**

8 **Q.** And it is a little warm in here and it is  
9 a cold day. I know you have come a long way. If you  
10 need to take a break at any point, let me know.

11 **A. Thank you.**

12 **Q.** You are here because you are a Plaintiff  
13 in a lawsuit against Google; is that right?

14 **A. That's right.**

15 **Q.** What is the lawsuit about?

16 **A. The lawsuit is about whether or not**  
17 **Google has the right to have control of my copyrighted**  
18 **books and those of all of the other authors that I**  
19 **represent.**

20 **Q.** What do you mean by control?

21 **A. I mean being able to do what I want with**  
22 **my own copyrighted books, that is to earn money from**  
23 **them, to sell rights to them.**

24 **Q.** What is Google doing that is interfering  
25 with those rights?

DIAMOND REPORTING, INC. - info@diamondreporting.com  
718.624.7200

1 **A. My objection would be that Google**

2 **shouldn't do that, to me or to any other author.**

3 **Q.** Do you think that that is true of all  
4 authors?

5 **A. I do.**

6 **Q.** What makes you think that?

7 **A. Well, I want to say common knowledge.**

8 **Q.** Do you base that common knowledge on  
9 anything in particular?

10 **A. Well, I for one don't want my rights**  
11 **taken away from me unless -- I assume other people who**  
12 **are authors as well don't want their rights taken away.**  
13 **I guess I would call that common knowledge.**

14 **Q.** Are you asking for the Court to order  
15 Google to shut down the snippet view portion of Google  
16 Books?

17 **A. Among other things.**

18 **Q.** Other than the \$750 payment, what things  
19 are those?

20 **A. Digitizing full copies of books.**

21 **Q.** Your books or those of others?

22 **A. All.**

23 **Q.** Why do you want the Court to order that  
24 Google shut down the snippet view portion of Google  
25 Books?

DIAMOND REPORTING, INC. - info@diamondreporting.com  
718.624.7200

1 **A. It is taking control of those rights**  
2 **without asking me whether it has permission to do so.**

3 **Q.** What are you asking the Court to do about  
4 that?

5 **A. To ask permission of me and all of the**  
6 **other authors that I represent before doing something**  
7 **with the books, which have their own copyright, and also**  
8 **to pay damages for the books that they have already**  
9 **taken over, \$750.**

10 **Q.** What is Google doing that you object to?

11 **A. It is not asking my permission as a**  
12 **copyright holder for anything that it is doing,**  
13 **specifically putting quote snippets from the books on**  
14 **the website and sending a copy of a digitized book back**  
15 **to the libraries from which they are cooperating with it**  
16 **in this time.**

17 **Q.** You mentioned the objection to Google not  
18 having asked permission?

19 **A. Yes.**

20 **Q.** If Google had asked your permission  
21 before scanning your book and displaying snippets, what  
22 would your response have been?

23 MR. BONI: Objection to the form. You can  
24 answer. I am placing an objection into the record.

25 THE WITNESS: Okay.

DIAMOND REPORTING, INC. - info@diamondreporting.com  
718.624.7200

1 **A. Because --**

2 MR. BONI: Let me object to form. There is a  
3 lot in that question for which there is a lacking of  
4 foundation, Google Books, for example. It hasn't been  
5 established if she knows what that is and all of that,  
6 so you can do whatever you want. I am objecting to the  
7 form of the question.

8 MR. GRATZ: Sure. Let me go back a little  
9 bit.

10 **Q.** Are you familiar with a website called  
11 Google Books?

12 **A. Yes.**

13 **Q.** What is Google Books?

14 **A. I don't know enough to tell you.**

15 **Q.** Do you know anything about Google Books?

16 **A. Google Books is the site on which one can**  
17 **see snippets displayed.**

18 **Q.** How does one come to see snippets  
19 displayed using Google Books?

20 **A. By calling up and reading it, I suppose.**

21 **Q.** How does one call it up?

22 **A. By searching for Google Books.**

23 **Q.** Have you used Google Books?

24 **A. Yes.**

25 **Q.** What have you used Google Books for?

DIAMOND REPORTING, INC. - info@diamondreporting.com  
718.624.7200

1 **A. To look up my own books.**  
2 **Q.** Have you used Google Books for anything  
3 else?  
4 **A. No.**  
5 **Q.** What did you find when you looked up your  
6 own books on Google Books?  
7 **A. I found lists of some of my books.**  
8 **Q.** Did you find anything other than lists?  
9 **A. I didn't find anything other.**  
10 **Q.** Did you find any of your books having  
11 snippets displayed from them?  
12 **A. I have seen snippets displayed.**  
13 **Q.** Under what circumstances did you see  
14 snippets displayed?  
15 MR. BONI: You can answer.  
16 **A. He showed me this morning. I seen.**  
17 **Q.** Before this morning, did you see snippets  
18 of your books displayed?  
19 **A. No.**  
20 **Q.** When was the most recent time that you  
21 used Google Books?  
22 **A. I don't know.**  
23 **Q.** Was it in the last year?  
24 **A. Yes.**  
25 **Q.** About how many times have you used Google  
DIAMOND REPORTING, INC. - info@diamondreporting.com  
718.624.7200

1 place. Is one of the things you are asking the Court to  
2 do is to stop Google from displaying snippets of books  
3 on Google Books?  
4 **A. Yes.**  
5 **Q.** Why do you want the Court to do that?  
6 MR. BONI: Object to the form.  
7 **A. I want the Court to do that because the**  
8 **snippet comes from a whole book which belongs to me by**  
9 **copyright.**  
10 **Q.** What is the relevance of the snippet  
11 coming from a whole book?  
12 **A. The snippet is a reference to a book that**  
13 **exists and has been digitized by Google.**  
14 **Q.** Why do you want the Court to stop that?  
15 **A. Because I don't want people to read the**  
16 **books that they search via the snippet without my**  
17 **control or my permission.**  
18 **Q.** Any other reason?  
19 **A. That will do.**  
20 **Q.** If the snippet view feature of Google  
21 Books were shut down, as you are asking the Court to do,  
22 would that benefit you?  
23 MR. BONI: Object to the form.  
24 **A. Yes, it would make it less easier for**  
25 **potential readers to read something that I feel is**  
DIAMOND REPORTING, INC. - info@diamondreporting.com  
718.624.7200

1 Books?  
2 **A. Very infrequently.**  
3 **Q.** Less than ten times?  
4 **A. Yes.**  
5 **Q.** Less than five times?  
6 **A. Yes.**  
7 **Q.** Less than three times?  
8 **A. Once or twice.**  
9 **Q.** Each time it was looking to see whether  
10 your books were there?  
11 **A. Just general interest, yes.**  
12 **Q.** I used the word snippet in an earlier  
13 question. I just want to make sure we have a common  
14 understanding of what that means. What is a snippet?  
15 **A. I want to ask you what you call a**  
16 **snippet, but what I call a snippet is a piece taken from**  
17 **a book or from a blurb about a book, but specifically**  
18 **from the content of the book from which you can get an**  
19 **idea of what the book is about, how it is written. It**  
20 **depends on which snippet.**  
21 **Q.** Why does it depend on which snippet?  
22 **A. Because there could be more than one**  
23 **snippet about any given book.**  
24 **Q.** So I am going to go back to a question  
25 that I asked earlier now that we got all of the terms in  
DIAMOND REPORTING, INC. - info@diamondreporting.com  
718.624.7200

1 **unauthorized.**  
2 **Q.** In any other way would it benefit you?  
3 **A. It would benefit me by knowing this was**  
4 **true for all other authors.**  
5 **Q.** Do you think that shutting down the  
6 snippet view feature of Google Books would benefit all  
7 of the other members of the class?  
8 **A. I do.**  
9 **Q.** Do you think that there are any whom it  
10 would harm?  
11 **A. I don't know if there is a neutral**  
12 **between benefit and harm.**  
13 **Q.** Do you think that it would be neutral as  
14 to some authors?  
15 **A. No, I think it would be harmful if the**  
16 **authors, myself included, didn't get the benefit.**  
17 **Q.** What benefit of that?  
18 **A. Of not having our books, as I said.**  
19 **Q.** So you don't think there are any authors  
20 whom Google Books benefits; is that right?  
21 MR. BONI: Object to the form.  
22 **Q.** It is all right. Let me ask the question  
23 in a clearer way.  
24 Do you think there are any authors who are  
25 benefited by the snippet view feature of Google Books?  
DIAMOND REPORTING, INC. - info@diamondreporting.com  
718.624.7200

1 **A. No. I already said that I think that all**  
 2 **authors are harmed by having their copyright used in**  
 3 **this way.**

4 **Q.** Do you think there are any countervailing  
 5 benefits?

6 **A. In this circumstance, no.**

7 **Q.** Are there any circumstances in which  
 8 there would be countervailing benefits?

9 MR. BONI: I think you are getting --

10 **A. Google is digitizing the books, that**  
 11 **means that they are available without a financial**  
 12 **benefit to me.**

13 **Q.** To whom are they available?

14 **A. They are available to anyone who uses a**  
 15 **library that has received a copy of the digitized book.**

16 **Q.** If they weren't available to library  
 17 patrons as a result of Google's digitization, would you  
 18 have the same objection?

19 **A. Yes.**

20 **Q.** Why?

21 **A. Because that is only one instance of**  
 22 **harm.**

23 **Q.** What other instances are there?

24 **A. The very fact that an author doesn't have**  
 25 **control of the book, which he or she has copyrighted,**  
 DIAMOND REPORTING, INC. - info@diamondreporting.com  
 718.624.7200

1 **Q.** Why do they do that?

2 **A. So that they can continue to or out of**  
 3 **print so that they can -- you know, they call them out**  
 4 **of print when, in fact, they don't intend to make**  
 5 **another printing immediately, but might in the future**  
 6 **and they can keep you thus from selling the rights to**  
 7 **some other publishers.**

8 **Q.** Is that true of any of your books right  
 9 now?

10 **A. I don't know.**

11 **Q.** Do you know whether anyone has bought a  
 12 copy of one of your books after finding it through  
 13 Google Books?

14 **A. No, I don't know that.**

15 **Q.** You don't know one way or the other  
 16 whether it has happened?

17 **A. I don't know.**

18 **Q.** If that happened, would that be an  
 19 economic benefit to you?

20 **A. No.**

21 MR. BONI: Object to the form. You've  
 22 answered.

23 **A. I have answered.**

24 **Q.** Why not?

25 **A. Because I wouldn't be getting the royalty**  
 DIAMOND REPORTING, INC. - info@diamondreporting.com  
 718.624.7200

1 **owns the rights to, that's my right and that's the right**  
 2 **of every author, so.**

3 **Q.** Do you consider that an economic right?

4 **A. Among others.**

5 **Q.** Have you lost any sales of books as a  
 6 result of Google Books?

7 **A. I have no way of knowing that.**

8 **Q.** Do you think that Google scanning and a  
 9 snippet display of your out of print books has resulted  
 10 in lost sales?

11 MR. BONI: Objection to form. You can  
 12 answer.

13 **A. I don't know.**

14 **Q.** Do you think that Google scanning and a  
 15 snippet display of your out of print books has resulted  
 16 in economic harm to you in the form of lost sales?

17 **A. No.**

18 **Q.** Have you done anything to try to find out  
 19 whether there have been any lost sales?

20 **A. No.**

21 **Q.** Are any of your books currently in print?

22 **A. It is a little unclear. Most of them are**  
 23 **out of print. Some of them are in print in certain**  
 24 **versions and not in ours, and publishers hold on to the**  
 25 **category in print as long as they possibly can.**

DIAMOND REPORTING, INC. - info@diamondreporting.com  
 718.624.7200

1 **as I otherwise should.**

2 **Q.** Let me clarify my question.

3 Well, let me ask a different question. Do  
 4 you know whether Google is selling copies of your books  
 5 on Google Books?

6 **A. No.**

7 **Q.** Do you know whether Google is selling or  
 8 making available full pages from your books on Google  
 9 Books?

10 **A. I don't know.**

11 **Q.** Is part of your objection based on a  
 12 belief that Google is selling copies of your books on  
 13 Google Books?

14 MR. BONI: Objection to form.

15 **A. I guess you have to say it again.**

16 **Q.** Is part of your objection as part of this  
 17 lawsuit to what Google is doing based on your  
 18 understanding that Google may be selling copies of your  
 19 books?

20 MR. BONI: Before you answer, Betty, I want  
 21 to interpose an objection. Joe, to clarify when you say  
 22 part of your objection, are you referring to the  
 23 allegations set forth in the Complaint or the Witness's  
 24 personal belief or what? That is very unclear.

25 MR. GRATZ: Sure.

DIAMOND REPORTING, INC. - info@diamondreporting.com  
 718.624.7200

1 book committee?  
2 **A. I don't remember. I don't know.**  
3 **Q.** Do you currently hold a position of  
4 leadership?  
5 **A. No.**  
6 **Q.** About when did you last hold a position  
7 of leadership in the Authors Guild?  
8 **A. Eight to ten years ago.**  
9 **Q.** Other than being chair of the children's  
10 book committee, have you ever held any other position in  
11 the Authors Guild, other than member?  
12 **A. No.**  
13 **Q.** Did anyone from the Authors Guild  
14 approach you specifically about including your books in  
15 the Back In Print program?  
16 **A. Not me specifically.**  
17 **Q.** How did you come to learn of the program?  
18 **A. Through written materials from the**  
19 **Authors Guild.**  
20 **Q.** Like a newsletter?  
21 **A. Informational material on this, yes.**  
22 **Q.** Do you know if the Authors Guild receives  
23 revenues from the sales of Backinprint.com editions?  
24 **A. No.**  
25 **Q.** Do you know the nature of the deal  
DIAMOND REPORTING, INC. - info@diamondreporting.com  
718.624.7200

1 MR. BONI: Joe, my God.  
2 **A. I could read it to you.**  
3 **Q.** I will withdraw the question.  
4 It tells a story; is that right?  
5 **A. Yes.**  
6 **Q.** It is not a reference book?  
7 **A. It is not a reference book.**  
8 **Q.** To learn what happens in the story, you  
9 have to read the book; is that right?  
10 **A. That's right.**  
11 **Q.** And the reason someone would buy The  
12 Trouble With Thirteen is that they can read the book and  
13 it tells the story; is that right?  
14 **A. Yes.**  
15 MR. GRATZ: We will mark this as Exhibit 8,  
16 this document.  
17 (Whereupon, the aforementioned document was  
18 marked as Miles Exhibit 8 for identification as of this  
19 date by the Reporter.)  
20 **Q.** I am handing you what has been marked as  
21 Exhibit 8. Do you recognize Exhibit 8?  
22 **A. How do you mean recognize? I've never**  
23 **seen it before.**  
24 **Q.** What is Exhibit 8, if you know?  
25 **A. So far it is bits and pieces from -- oh,**  
DIAMOND REPORTING, INC. - info@diamondreporting.com  
718.624.7200

1 between the Authors Guild and iUniverse with respect to  
2 the Authors Guild Backinprint.com program?  
3 MR. BONI: Object to the form.  
4 **A. I don't know.**  
5 **Q.** You said "I don't know"; is that right?  
6 **A. I did.**  
7 MR. GRATZ: Let's mark as Exhibit 7, this  
8 book.  
9 (Whereupon, the aforementioned book was  
10 marked as Miles Exhibit 7 for identification as of this  
11 date by the Reporter.)  
12 **Q.** I handed you what has been marked as  
13 Exhibit 7. Do you recognize Exhibit 7?  
14 **A. Certainly do.**  
15 **Q.** What is Exhibit 7?  
16 **A. A book called The Trouble With Thirteen.**  
17 **Q.** What is The Trouble With Thirteen?  
18 **A. This is a paperback book.**  
19 **Q.** Is it a novel?  
20 **A. Yes.**  
21 **Q.** A young adult novel?  
22 **A. Yes, it is.**  
23 **Q.** What is it about?  
24 **A. Do you really want to know?**  
25 **Q.** Briefly?

DIAMOND REPORTING, INC. - info@diamondreporting.com  
718.624.7200

1 **The Trouble With Thirteen, Hey! I am reading! and**  
2 **another The Trouble With Thirteen.**  
3 **Q.** Turning your attention to the first three  
4 pages of Exhibit 8.  
5 **A. Just a minute.**  
6 **Q.** Sorry.  
7 **A. Okay. The first three pages.**  
8 **Q.** Yes. In the upper left-hand corner, do  
9 you see that it says Google Books?  
10 **A. Yes.**  
11 **Q.** Does this appear to be a page from Google  
12 Books?  
13 **A. I don't know.**  
14 **Q.** You will see an image under where it says  
15 The Trouble With Thirteen in the upper left-hand corner?  
16 **A. Yes.**  
17 **Q.** Is that the title page of The Trouble  
18 With Thirteen in the box?  
19 **A. Yes.**  
20 **Q.** Below that it says "from inside of the  
21 book," do you see that?  
22 **A. Yes.**  
23 **Q.** Underneath that, it is a little hard to  
24 see on this copy, there is the word Annie in a box with  
25 a button "search" next to it?

DIAMOND REPORTING, INC. - info@diamondreporting.com  
718.624.7200

1 Do you understand the Complaint in this case  
2 to be seeking a remedy for the display of a list of  
3 common terms and phrases in the manner in which you see  
4 here on the second page of Exhibit 8?

5 **A. You will have to start that question**  
6 **again.**

7 **Q.** Do you understand The Complaint in this  
8 case?

9 **A. Yes, I do.**

10 **Q.** To be seeking a remedy for the display of  
11 terms and phrases?

12 **A. For this kind of -- not for these**  
13 **specific words.**

14 **Q.** But for the practice of developing and  
15 displaying lists of common terms and phrases?

16 **A. You are still not asking it the way that**  
17 **I want you to ask it.**

18 MR. BONI: You can answer it however you want  
19 to answer it. If you don't understand the question,  
20 have him ask it again.

21 **A. Well, you are asking if I object to these**  
22 **words being shown?**

23 MR. BONI: He is asking if The Complaint says  
24 it.

25 **A. The Complaint does not say anything about**  
DIAMOND REPORTING, INC. - info@diamondreporting.com  
718.624.7200

1 MR. GRATZ: I will mark as Exhibit 9 a  
2 two-page document, the heading Betty Miles Out-Of-Print  
3 Titles and In-Print Status Unknown.

4 (Whereupon, the aforementioned document was  
5 marked as Miles Exhibit 9 for identification as of this  
6 date by the Reporter.)

7 **Q.** Do you recognize what has been marked as  
8 Exhibit 9?

9 **A. Yes. It is a list of books of mine that**  
10 **are now out of print.**

11 **Q.** What is the second page of Exhibit 9?

12 **A. Status unknown of my books, whether they**  
13 **are in print or out of print.**

14 **Q.** Between the first and second pages of  
15 Exhibit 9, is this a complete list of your books?

16 **A. Oh, I think I have about 35. We can**  
17 **count.**

18 **Q.** Let me ask a different question then.  
19 Did you prepare Exhibit 9?

20 **A. Yes, I did.**

21 **Q.** Do you know of any books that aren't  
22 listed on Exhibit 9?

23 **A. No. I would hope it was a comprehensive**  
24 **list.**

25 **Q.** I think I have come up with five that are  
DIAMOND REPORTING, INC. - info@diamondreporting.com  
718.624.7200

1 **these words. The Complaint says all authors do not want**  
2 **the text to be so available by so many snippets without**  
3 **the permission of the authors.**

4 **Q.** Your understanding is the Complaint  
5 doesn't deal specifically with lists of common words and  
6 phrases; is that right?

7 **A. Not specifically with my books, that is**  
8 **why it has been hard to answer all of these questions.**

9 **Q.** Do you personally object to the display  
10 of a list of common terms and phrases from your books?

11 **A. I do.**

12 **Q.** Why?

13 **A. Because it implies that there is a**  
14 **scanned book which is then going to be available to**  
15 **libraries. This is proof of it.**

16 **Q.** So it is not the list itself. It is that  
17 it implies the copies that would need to be made to make  
18 this list; is that right?

19 **A. It implies, yes, copying the book without**  
20 **authorization.**

21 **Q.** Is The Trouble With Thirteen in print?

22 **A. The Trouble With Thirteen has been**  
23 **printed in many editions, so many that I can't tell you**  
24 **whether overall it is considered by my publisher in**  
25 **print or not.**

DIAMOND REPORTING, INC. - info@diamondreporting.com  
718.624.7200

1 not on Exhibit 9.

2 MR. BONI: The Trouble With Thirteen.

3 **A. Is not on this.**

4 **Q.** We will be referring to this list a  
5 couple of times. I want to confirm just a couple of  
6 things. In addition to the books listed here, you wrote  
7 a book called The Trouble With Thirteen?

8 **A. Yes.**

9 **Q.** That was first published by Knopf?

10 **A. Yes.**

11 **Q.** You wrote a book called I Would If I  
12 Could?

13 **A. Yes.**

14 **Q.** That was first published by Knopf?

15 **A. Yes.**

16 **Q.** That is currently available as An Authors  
17 Guild Back In Print; right?

18 **A. Yes.**

19 **Q.** You also published a book called Maudie  
20 And Me?

21 **A. Yes.**

22 **Q.** It was first published by Knopf?

23 **A. Yes.**

24 **Q.** You also published a book called The  
25 Secret Life Of The Underwear Champ?

DIAMOND REPORTING, INC. - info@diamondreporting.com  
718.624.7200



1 **A. Yes.**  
 2 **Q.** Which I recall fondly.  
 3 **A. Oh, how nice.**  
 4 **Q.** That was first published by Knopf?  
 5 **A. Yes.**  
 6 **Q.** You also published a book called Sink Or  
 7 Swim?  
 8 **A. Yes.**  
 9 **Q.** That was first published by Knopf as  
 10 well?  
 11 **A. Yes.**  
 12 **Q.** And you also wrote the other books that  
 13 are listed here?  
 14 **A. Yes.**  
 15 **Q.** Do you know how many of your books have  
 16 been scanned by Google?  
 17 **A. No, I don't.**  
 18 **Q.** Have you asked Google to remove any of  
 19 your books from Google Books?  
 20 **A. No, not as an individual.**  
 21 **Q.** Why not?  
 22 **A. Because this is part of the claim and I**  
 23 **am acting with respect to that.**  
 24 **Q.** Do you want Google to remove any of your  
 25 books from Google Books?  
 DIAMOND REPORTING, INC. - info@diamondreporting.com  
 718.624.7200

1 **Q.** When did you first learn that the Authors  
 2 Guild was considering bringing a lawsuit against Google?  
 3 **A. Probably the year before.**  
 4 **Q.** From whom did you learn that?  
 5 **A. From the Authors Guild.**  
 6 **Q.** A particular person at the Authors Guild?  
 7 **A. I can't tell you. Certainly from the**  
 8 **Authors Guild's bulletin. I can't tell you because I**  
 9 **can't remember.**  
 10 **Q.** So you learned from the Authors Guild's  
 11 bulletin that the Authors Guild was considering bringing  
 12 a lawsuit against Google?  
 13 **A. Yes.**  
 14 **Q.** What happened next?  
 15 **A. It did.**  
 16 **Q.** Did the Authors Guild contact you  
 17 specifically about becoming a named Plaintiff?  
 18 **A. Yes, and I don't know how soon that must**  
 19 **have been.**  
 20 **Q.** Do you remember who at the Authors Guild  
 21 contacted you?  
 22 **A. It probably was Paul.**  
 23 **Q.** By Paul you mean Paul Akin?  
 24 **A. Yes, Paul Akin as director.**  
 25 **Q.** Do you know why he contacted you  
 DIAMOND REPORTING, INC. - info@diamondreporting.com  
 718.624.7200

1 **A. It is not the problem of my books. It is**  
 2 **the problem of the principle of doing this for all**  
 3 **books.**  
 4 **Q.** So apart from your desire that Google  
 5 Books be changed with respect to all books, you don't  
 6 have a particular desire to have your own books removed?  
 7 **MR. BONI:** It mischaracterizes the testimony.  
 8 I object to the form.  
 9 **A. I mean I care about -- this is something**  
 10 **that I care about. I care about it for my own books, of**  
 11 **course they are my own books, I care about it for all**  
 12 **authors' books.**  
 13 **Q.** But you haven't asked Google to remove?  
 14 **A. No, well, except as this claim is asking.**  
 15 **Q.** Do you want Google to remove your books  
 16 from Google Books?  
 17 **A. Yes.**  
 18 **Q.** What is your role in this litigation?  
 19 **A. My role is to stand for all other authors**  
 20 **and to be aware of the gist of the claim and to approve**  
 21 **of that, yes.**  
 22 **Q.** When did your involvement in this  
 23 litigation begin?  
 24 **A. Back when the original -- I guess that**  
 25 **was 2005.**

DIAMOND REPORTING, INC. - info@diamondreporting.com  
 718.624.7200

1 specifically?  
 2 **A. Because I have been involved in the Guild**  
 3 **in part and because one of my books was in the**  
 4 **University of Michigan library which was one of the**  
 5 **libraries that is a part of this program.**  
 6 **Q.** You are in this case as in your status as  
 7 a member of the Guild?  
 8 **A. Partly, in my status as an author, in my**  
 9 **work as an author.**  
 10 **Q.** What was your involvement in the case  
 11 before it was filed? Paul Akin talked to you, you read  
 12 this in the bulletin, Paul Akin talked to you, what  
 13 happened next?  
 14 **A. I can't tell you in sequence. I know I**  
 15 **talked to Anita about the case over time and read a lot**  
 16 **about it.**  
 17 **Q.** Before the case was filed, did you talk  
 18 to Anita about it?  
 19 **A. Probably not.**  
 20 **Q.** Before the case was filed, did you talk  
 21 to anyone other than Paul Akin about it?  
 22 **A. Not that I remember.**  
 23 **Q.** Did you talk to Mike Boni about it before  
 24 it was filed?  
 25 **A. No.**

DIAMOND REPORTING, INC. - info@diamondreporting.com  
 718.624.7200



1 the proposed settlement were fair?

2 **A. Yes.**

3 **Q.** But the authors are now asking for a  
4 different amount of money than was in the settlement, is  
5 that your understanding?

6 **A. I don't know.**

7 **Q.** Thinking back to the proposed settlement,  
8 were you in charge of deciding what its terms should be?

9 **A. No.**

10 **Q.** Who was?

11 **A. That's a group of people, not whom I am**  
12 **one.**

13 **Q.** Did you have the independent ability to  
14 reject the settlement?

15 **A. No. I am not a lawyer.**

16 **Q.** Turning to a different topic in 2011,  
17 just by category, what were your sources of income?

18 **A. Royalties. Well, Social Security, right,**  
19 **pension, TIAA. Do you know that?**

20 **Q.** Yes.

21 **A. And royalties from my own books and**  
22 **royalties from my late husband's books.**

23 **Q.** What is your late husband's name?

24 **A. Matthew B. Miles.**

25 **Q.** Is your pension related to your work at  
DIAMOND REPORTING, INC. - info@diamondreporting.com  
718.624.7200

1 books versus your late husband's?

2 **A. More of it was from my late husband.**

3 **Q.** Turning now to a different topic, The  
4 Trouble With Thirteen, as we said, is a young adult  
5 novel; is that right?

6 **A. Yes. That classification is vague. This**  
7 **is a young, young adult novel.**

8 **Q.** In that it is aimed as a younger age  
9 group?

10 **A. Yes. Well, 13.**

11 **Q.** What is the purpose of a young adult  
12 novel?

13 MR. BONI: Object to the form.

14 **A. A young adult novel in general?**

15 **Q.** Yes.

16 **A. I could talk for a half an hour about**  
17 **that. I don't know how to sum it up, but it is to**  
18 **entertain, edify, amuse, instruct, all of the purposes**  
19 **of reading, younger people, concentrating mostly --**  
20 **focusing on their age, their age range, rather than the**  
21 **adults that surround them.**

22 **Q.** Is it right that The Secret Life Of The  
23 Underwear Champ is also an adult novel?

24 **A. Yes, that is really young, young adult.**

25 **Q.** How about Looking On?

DIAMOND REPORTING, INC. - info@diamondreporting.com  
718.624.7200

1 Bank Street?

2 **A. No, no, that was not full-time teaching.**

3 **Q.** About how much, just not in terms of  
4 dollars?

5 MR. BONI: This is personal information. Can  
6 you profer a reason why you are asking for her income  
7 right now?

8 MR. GRATZ: I am not asking for any number of  
9 dollars.

10 MR. BONI: Well, why are you asking these  
11 questions? They seem so far afield in her role as a  
12 class representative.

13 **Q.** What percentage of your income came from  
14 royalties last year?

15 **A. Last year?**

16 **Q.** Yes.

17 **A. In 2011?**

18 **Q.** Yes.

19 **A. Is that a legitimate question there?**

20 MR. BONI: I object to the propriety of the  
21 question. I will allow her to answer. It doesn't  
22 violate a privilege, but I think we are far afield of  
23 the subject matter of the deposition.

24 **A. 15 to 20 percent.**

25 **Q.** About how much of that was from your  
DIAMOND REPORTING, INC. - info@diamondreporting.com  
718.624.7200

1 **A. Yes, I would call that a young adult**  
2 **novel.**

3 **Q.** Sink Or Swim?

4 **A. Around 12 say.**

5 **Q.** Likewise, Maudie And Me And The Dirty  
6 Book is a young adult novel of some description?

7 **A. Yes.**

8 **Q.** All It Takes Is Practice as well?

9 **A. Yes.**

10 **Q.** As well as I Would If I Could?

11 **A. A little younger.**

12 **Q.** The Real Me?

13 **A. Yes.**

14 **Q.** And Just The Beginning is also a young  
15 adult novel?

16 **A. Yes.**

17 **Q.** All of those have the purposes that you  
18 described earlier with respect to The Trouble With  
19 Thirteen?

20 **A. Yes.**

21 **Q.** Not all of your books are young adult  
22 novels?

23 **A. Right.**

24 **Q.** Others are children's picture books?

25 **A. Yes. Some of those are children's**

DIAMOND REPORTING, INC. - info@diamondreporting.com  
718.624.7200

1 picture books. There is one and one revised copy of a  
2 book about the environment which is really more used by  
3 middle school, even high school kids, older elementary  
4 kids.

5 Q. Is the book that you are describing Save  
6 The Earth?

7 A. Yes.

8 Q. So other than Save The Earth, are the  
9 remainder of your books children's picture books?

10 A. Yes. There is another one called Hey! I  
11 Am Reading! which is a book that it is a picture book,  
12 but it is really -- do you have it there?

13 Q. I do.

14 A. Okay, so then you can look at it and see.  
15 It is focused on the act of reading for kids starting to  
16 do that, but it is not what I would call a picture book  
17 in the traditional form.

18 Q. Is that because it is instructive rather  
19 than telling a story?

20 A. It is not a story, it is non-fiction,  
21 actually as many picture books are.

22 Q. Save The Earth doesn't tell a story; is  
23 that right?

24 A. That's right.

25 Q. A House For Everyone does tell a story;

DIAMOND REPORTING, INC. - info@diamondreporting.com  
718.624.7200

1 A. These are really easy to read retellings  
2 of old tales.

3 Q. What is the purpose of a children's  
4 picture book?

5 A. Oh, I could not tell you that, that  
6 varies as children's pictures books vary.

7 Q. What is the purpose of A House For  
8 Everyone?

9 MR. BONI: Object to the form.

10 A. The purpose is not --

11 MR. BONI: Purpose for whom, Joe?

12 Q. For what purpose did you write A House  
13 For Everyone?

14 A. Well, that's a hard question to ask any  
15 writer. To talk about the different ways that people  
16 live, in a way that a young child could comprehend, and  
17 to be a nice story to read before bedtime and on and on.

18 Q. With respect to each of the children's  
19 picture books that you've written, we discussed earlier  
20 whether short snippets from The Trouble With Thirteen  
21 could obviate the need for purchasing the book?

22 A. Yes.

23 Q. Is that likewise true of your picture  
24 books?

25 A. Of course a snippet of a picture book

DIAMOND REPORTING, INC. - info@diamondreporting.com  
718.624.7200

1 is that right?

2 A. No.

3 Q. What is A House For Everyone?

4 A. It uses the framework of a day to show  
5 children in different sorts of communities or places or  
6 families.

7 Q. Is A House For Everyone a children's  
8 picture book?

9 A. Yes, it is.

10 Q. Likewise, is The Cooking Book a  
11 children's picture book?

12 A. Yes.

13 Q. And The Feast On Sullivan Street?

14 A. Yes, that is a little older than a  
15 picture book. You see that it has a lot of text.

16 Q. A Day of Autumn, Summer, Winter and  
17 Spring?

18 A. Those are picture books.

19 Q. Mr. Turtle's Mystery?

20 A. A little more text, but it is a picture  
21 book.

22 Q. Having A Friend?

23 A. Picture book.

24 Q. And Goldilocks And The Three Bears, The  
25 Sky Is Falling and the Tortoise And The Hare?

DIAMOND REPORTING, INC. - info@diamondreporting.com  
718.624.7200

1 would encompass more of a book, there is pagewise,  
2 textwise.

3 Q. Would it obviate the need to purchase the  
4 book?

5 A. No. A picture book by definition has  
6 pictures in it.

7 Q. And a picture book isn't much good if you  
8 just have that much of it?

9 A. Yes.

10 MR. BONI: Are we wrapping up soon?

11 MR. GRATZ: Yes, we are getting there. I  
12 don't think we will go another hour.

13 MR. BONI: Let's take a short break.

14 (Whereupon, a short recess was taken.)

15 MR. GRATZ: We have just come back from a  
16 break in the deposition that Mr. Boni requested and the  
17 Witness.

18 A. I have just been reminded that I did, in  
19 fact, read the Complaint and that I did sign an  
20 agreement and had not put that on to your record.

21 Q. Turning to the question of publishing  
22 contracts, with respect to each of your published books,  
23 was there a written publishing contract?

24 A. Yes.

25 Q. Do you currently have in your possession

DIAMOND REPORTING, INC. - info@diamondreporting.com  
718.624.7200

1 any of those publishing contracts?  
2 **A. Oh, yes.**  
3 **Q.** Which ones?  
4 **A. I can't tell you.**  
5 **Q.** Have you provided any of those publishing  
6 contracts?  
7 **A. Maybe not.**  
8 MR. BONI: Do you want me to check? Whatever  
9 we have we produced. I don't recall.  
10 **A. I don't think I have all of them in my**  
11 **files, but I do have some.**  
12 **Q.** Have you provided any of them to Mr.  
13 Boni?  
14 **A. I guess not.**  
15 MR. BONI: I turned over everything that we  
16 had, Joe.  
17 **Q.** But you know you have some of them in  
18 your possession?  
19 **A. I do.**  
20 **Q.** But not all of them?  
21 **A. Not all of them.**  
22 **Q.** With respect to A House For Everyone, do  
23 you have the publishing contract?  
24 **A. I doubt it. That was my very first book**  
25 **that was published in 1958.**  
DIAMOND REPORTING, INC. - info@diamondreporting.com  
718.624.7200

1 **and rising of royalties and a whole lot of things.**  
2 **Q.** Including non-monetary terms?  
3 **A. Right, including non-monetary terms.**  
4 **Q.** Do you know whether any of the publishing  
5 contracts for your books provided that you would retain  
6 the digital publication rights?  
7 **A. I could tell you that they did not. I**  
8 **mean that I did, yes, they did not give -- they did not**  
9 **discuss digitalization.**  
10 **Q.** They didn't discuss digitization one way  
11 or the other?  
12 **A. That's right.**  
13 **Q.** And that's true of all of the contracts,  
14 including the ones with Aladdin in the 1990s, or would  
15 you need to see the contracts?  
16 **A. I would need to see the Simon & Schuster**  
17 **contracts. The Simon & Schuster contracts are the four**  
18 **easy to read books. All of the others were published**  
19 **before the question of electronic rights became an**  
20 **issue.**  
21 **Q.** Does that include Hey! I Am Reading?  
22 **A. Yes, it does. It was the last book**  
23 **published by Random before contracts discussed**  
24 **digitization, right.**  
25 **Q.** How do you know that?  
DIAMOND REPORTING, INC. - info@diamondreporting.com  
718.624.7200

1 **Q.** What were the terms of the publishing  
2 contract for A House For Everyone?  
3 **A. I couldn't possibly tell you.**  
4 **Q.** Sitting here today, can you tell me the  
5 terms of any of the publishing contracts for your books  
6 or would you need to --  
7 **A. By terms, do you mean financial terms, do**  
8 **you mean contract terms?**  
9 MR. BONI: You mean the paragraphs?  
10 **Q.** I mean contractual terms. I mean what  
11 agreements are written down in the contracts?  
12 **A. I don't know. If you see a random**  
13 **contract which can give a branch of, you know, they are**  
14 **legalized paper, five or six pages, small type.**  
15 **Q.** You would need to see the contracts  
16 themselves to tell me?  
17 **A. Oh, yes.**  
18 **Q.** Did the terms of the contracts differ  
19 from book to book at all?  
20 **A. Of course.**  
21 **Q.** To tell me what the differences are, you  
22 would need to see the contract; is that right?  
23 **A. I could tell you I was paid more money as**  
24 **I became a more published author and I had more say in**  
25 **the terms, like under what, you know, selling of rights**

DIAMOND REPORTING, INC. - info@diamondreporting.com  
718.624.7200

1 **A. I know that because I saw the sign above**  
2 **my editor's desk from Mr. Vitale saying from now on, and**  
3 **it was dated, and I had just signed my contract. From**  
4 **now on we will not let a contract out of this house**  
5 **without.**  
6 **Q.** Without discussing digital rights?  
7 **A. Yes.**  
8 **Q.** Did any of the contracts for your books  
9 discuss promotional uses of excerpts from the publisher?  
10 **A. No. I think you asked me that before and**  
11 **I said I don't think that is a contractual use.**  
12 **Q.** With respect to any of your books, were  
13 there any oral rather than written agreements --  
14 **A. No.**  
15 **Q.** -- after the contract was signed?  
16 **A. No.**  
17 **Q.** Did any of the contracts provide for  
18 reversion of rights to you?  
19 **A. Yes.**  
20 **Q.** Upon occurrence of what event?  
21 **A. It is murky and I would have to look that**  
22 **up. I do have, as you saw, some reversion of right**  
23 **statements.**  
24 **Q.** Were you required to submit a reversion  
25 request?

DIAMOND REPORTING, INC. - info@diamondreporting.com  
718.624.7200

1 **A. Yes.**

2 **Q.** With respect to all of them?

3 **A. Each of them.**

4 **Q.** Did you submit those reversion requests?

5 **A. As they seemed to be going out of print,**  
6 **yes. Some of them are still ambiguous.**

7 **Q.** The ambiguous ones are listed on the  
8 second page of exhibit --

9 **A. Yes, as you saw not complete.**

10 **Q.** Exhibit 9?

11 **A. Yes.**

12 **Q.** With respect to the titles on the first  
13 page of Exhibit 9.

14 **A. Yes.**

15 **Q.** Have you submitted reversion request  
16 letters with respect to each of those titles?

17 **A. Most of them, yes, but I can't say for**  
18 **sure.**

19 MR. GRATZ: We will mark as Exhibit 10 a  
20 letter dated December 5, 1995 to Betty Miles from Alfred  
21 A. Knopf, Inc.

22 (Whereupon, the aforementioned document was  
23 marked as Miles Exhibit 10 for identification as of this  
24 date by the Reporter.)

25 **Q.** Do you recognize what has been marked as  
DIAMOND REPORTING, INC. - info@diamondreporting.com  
718.624.7200

1 **selling -- I mean my editor wanted my books. I didn't**  
2 **need her for sales. She was not doing well on the**  
3 **rights and I was about to make a big sale of rights to**  
4 **paperback rights for a lot of the novels to Knopf, my**  
5 **publisher, and it seemed a good time to be realistic and**  
6 **say that to her and leave her.**

7 **Q.** And Exhibit 10 here is an acknowledgement  
8 that the rights are reverting to you in Just Think; is  
9 that right?

10 **A. Yes.**

11 **Q.** So with respect to Just Think, after this  
12 letter was sent, you owned all of the rights; is that  
13 right?

14 **A. Yes.**

15 **Q.** Do you still own all of the rights in  
16 Just Think?

17 **A. Sure, this is forever.**

18 **Q.** You haven't transferred any to anyone  
19 since this?

20 **A. No.**

21 MR. GRATZ: Let's mark as Exhibit 11 a letter  
22 from Amy Nathanson from Random House to Betty Miles  
23 dated July 24, 1995.

24 (Whereupon, the aforementioned document was  
25 marked as Miles Exhibit 11 for identification as of this  
DIAMOND REPORTING, INC. - info@diamondreporting.com  
718.624.7200

1 Exhibit 10?

2 **A. Yes.**

3 **Q.** What is Exhibit 10?

4 **A. It is a reversion of rights agreement.**

5 **Q.** It is with respect to the book Just  
6 Think; is that right?

7 **A. Yes.**

8 **Q.** It is cced to McIntosh and Otis, Inc.?

9 **A. Yes.**

10 **Q.** What is McIntosh and Otis, Inc.?

11 **A. That was my agent.**

12 **Q.** Was that your agent in 1995, your agent  
13 in 1970 or both?

14 **A. I can't remember. Let's see. I think I**  
15 **wrote that down somewhere. No, I don't have it. I**  
16 **forget when I left my agent. It was from the beginning**  
17 **until I --**

18 **Q.** If it refreshes your recollection, here  
19 are the books back.

20 MR. BONI: You either remember or you don't.

21 **A. I don't remember. I think it was**  
22 **probably in the early '90s that I left my agent.**

23 **Q.** Why did you leave your agent?

24 **A. I left my agent because she was not doing**  
25 **well with selling foreign rights and I had been**

DIAMOND REPORTING, INC. - info@diamondreporting.com  
718.624.7200

1 date by the Reporter.)

2 **Q.** Do you recognize what has been marked as  
3 Exhibit 11?

4 **A. Yes.**

5 **Q.** What is it?

6 **A. It is a remainder notice of one addition**  
7 **of The Trouble With Thirteen being remaindered. That**  
8 **means that there will be no more of that printed, in**  
9 **that form.**

10 **Q.** Does Exhibit 11 indicate who owns the  
11 rights with The Trouble With Thirteen?

12 **A. No. It is only one edition of a book to**  
13 **which I still own the rights.**

14 **Q.** Do you own all rights with The Trouble  
15 With Thirteen?

16 **A. Yes. Well, no, that is one of the**  
17 **ambiguous ones, whether they reverted or not.**

18 **Q.** When it is reverted or not depends on the  
19 terms of the publishing contract; is that right?

20 **A. It depends on the number on whether each**  
21 **edition of the book has been remaindered.**

22 **Q.** Has each edition with The Trouble With  
23 Thirteen been remaindered?

24 **A. I don't know.**

25 **Q.** Sitting here today, can you tell me

DIAMOND REPORTING, INC. - info@diamondreporting.com  
718.624.7200

1 whether or not you own all of the rights to The Trouble  
2 With Thirteen?  
3 **A. I don't have a formal acknowledge of the**  
4 **reversion of rights.**

5 **Q.** So some rights may remain with Knopf?

6 **A. If they -- yes, yes.**

7 **Q.** Depending on whether there is an edition  
8 out there that hasn't been remaindered?

9 **A. Rights don't depend on editions. It is**  
10 **the rights go with the title.**

11 **Q.** With respect to that title, it is unclear  
12 whether all of the conditions have occurred for there to  
13 be?

14 **A. Each edition has been remaindered, in**  
15 **that case I could legitimately ask for a reversion of**  
16 **rights.**

17 **Q.** And you haven't asked for a reversion of  
18 rights with The Trouble With Thirteen?

19 **A. No.**

20 **Q.** That is likely true with respect to  
21 Maudie And Me And The Dirty Book; is that right?

22 **A. I think so.**

23 MR. GRATZ: Let's mark as Exhibit 12 a letter  
24 dated February 28, 1996 to Betty Miles from Random  
25 House.

DIAMOND REPORTING, INC. - info@diamondreporting.com  
718.624.7200

1 (Whereupon, the aforementioned document was  
2 marked as Miles Exhibit 12 for identification as of this  
3 date by the Reporter.)

4 **Q.** Do you recognize Exhibit 12?

5 **A. Yes.**

6 **Q.** What is it?

7 **A. It is, again, another remainder notice**  
8 **for a particular edition of the book, in this case**  
9 **Maudie And Me And The Dirty Book.**

10 **Q.** Is Maudie And Me And The Dirty Book  
11 similarly situated as The Trouble With Thirteen?

12 **A. Yes.**

13 **Q.** You haven't sent a reversion request with  
14 respect to Maudie And Me And The Dirty Book?

15 **A. That's right.**

16 **Q.** Have you sent a reversion request with  
17 respect to A Day Of Spring?

18 **A. I don't know.**

19 **Q.** Have you sent a reversion request with  
20 respect to A Day of Autumn?

21 **A. I don't know.**

22 **Q.** Other than the reversion acknowledgment  
23 letters that you provided to your Counsel, do you have  
24 any other reversion acknowledgment letters?

25 **A. I may have, but I am not sure.**

DIAMOND REPORTING, INC. - info@diamondreporting.com  
718.624.7200

1 **Q.** What would you need to do to find out?

2 **A. Contact the publisher.**

3 **Q.** Do you possess any other reversion  
4 acknowledgment letters other than the ones that you  
5 provided to your Counsel?

6 **A. You just asked me. I said I wasn't sure.**

7 **Q.** Are there any books for which you had  
8 sent a reversion request letter but not received a  
9 reversion acknowledgment letter?

10 **A. At this moment, no.**

11 **Q.** Is it consistent with your recollection  
12 that all of your out of print titles from the beginning  
13 through A Day Of Spring published in 1970 are ones for  
14 which you don't have a reversion acknowledgment letter?

15 **A. I am not sure which of those. You have**  
16 **them here, but I don't know which ones they are.**

17 MR. GRATZ: We will have this marked as  
18 Exhibit 13, a document bearing Bates number P-Miles-025.

19 (Whereupon, the aforementioned document was  
20 marked as Miles Exhibit 13 for identification as of this  
21 date by the Reporter.)

22 **Q.** You have been handed what has been marked  
23 as Exhibit 13. Do you recognize this document?

24 **A. This is Mr.-- oh, no. Yes, I mean I have**  
25 **been following these articles in the Times, yes.**

DIAMOND REPORTING, INC. - info@diamondreporting.com  
718.624.7200

1 **Q.** This is an article by Katie Hafner,  
2 headlined At Harvard, a Man, a Plan and a Scanner; is  
3 that right?

4 **A. Yes.**

5 **Q.** This is an article that you clipped from  
6 the newspaper; is that right?

7 MR. BONI: We produced this in the first  
8 production six years ago, five or six years ago.

9 **A. I intend to clip things, yes.**

10 **Q.** Do you maintain clipping files of  
11 interesting articles?

12 **A. Yes, I do.**

13 **Q.** What led you to clip this article?

14 **A. I have been clipping articles about the**  
15 **Google case from the beginning because I am very**  
16 **invested in this. My opinion on this has been sought**  
17 **and given and I feel that my role in this case is to**  
18 **weigh in on issues around it, so it is important to me**  
19 **to keep up with. I mean this is an early one, but I**  
20 **read it, not just in the Times, in the New York review**  
21 **of books. This is important to me because I feel I am**  
22 **really representing authors who want to control their**  
23 **rights and I am concerned that I will weigh in sensibly**  
24 **and be aware and my opinion bears some weight.**

25 **Q.** Turning to the second page of Exhibit 13.

DIAMOND REPORTING, INC. - info@diamondreporting.com  
718.624.7200



1 **A. In the Author Guild's bulletin?**  
 2 **Q.** Yes.  
 3 **A. Yes, there were.**  
 4 **Q.** Were those articles provided to your  
 5 Counsel as part of discovery in this case?  
 6 **A. I have no idea.**  
 7 MR. BONI: We are not maintaining privilege  
 8 as to those, Joe.  
 9 MR. GRATZ: But they haven't been produced?  
 10 MR. BONI: No.  
 11 MR. GRATZ: Nothing further.  
 12 MR. BONI: I just have a question or two.  
 13 EXAMINATION BY  
 14 MR. BONI:  
 15 **Q.** You were just asked among the documents  
 16 you were shown was the notice with respect to the  
 17 settlement agreement in the case; is that correct?  
 18 **A. Yes.**  
 19 **Q.** Did you weigh in with respect to the  
 20 settlement agreement?  
 21 **A. Yes, I did.**  
 22 **Q.** You testified earlier about royalty  
 23 income with respect to your late husband. What type of  
 24 author was your husband?  
 25 **A. He was an academic author. He wrote**  
 DIAMOND REPORTING, INC. - info@diamondreporting.com  
 718.624.7200

1 textbooks.  
 2 **Q.** You were asked earlier about academic  
 3 authors and whether you can fairly represent or I think  
 4 the word was adequately represent academic authors. Do  
 5 you believe that you can?  
 6 **A. Very much so.**  
 7 **Q.** Why is that?  
 8 **A. Well, not only in my husband's case, but**  
 9 **many of his colleagues. I know a great many academics,**  
 10 **as I know a great many plain authors and I know that no**  
 11 **matter what kind of book they are writing, they are all**  
 12 **concerned about their copyright and the rights of**  
 13 **holders of copyright to control their books.**  
 14 MR. BONI: I have no further questions.  
 15 Thank you.  
 16 CONTINUED EXAMINATION BY  
 17 MR. GRATZ:  
 18 **Q.** One or two questions.  
 19 With respect to your husband's books, were  
 20 they all textbooks?  
 21 **A. Yes, they were published by Sage**  
 22 **Publications, which is essentially a text house in the**  
 23 **social sciences essentially, yes.**  
 24 **Q.** The publishing contracts with respect to  
 25 those textbooks, did they provide for that your late  
 DIAMOND REPORTING, INC. - info@diamondreporting.com  
 718.624.7200

1 husband could receive a reversion of rights upon  
 2 occurrence of some event or were they a different kind  
 3 of contract?  
 4 MR. BONI: Object to the form. You can  
 5 answer.  
 6 **A. Yes, I don't know what different kind of**  
 7 **contract. They were pretty thorough contracts. I am**  
 8 **not sure about the specific reversion of rights clause.**  
 9 **Q.** Do you own the copyright in your  
 10 husband's books?  
 11 **A. Yes, I do.**  
 12 **Q.** And Sage does not; is that right?  
 13 **A. I own them.**  
 14 **Q.** Is that as a result of reversion or  
 15 because your husband retained ownership?  
 16 **A. Because he retained ownership.**  
 17 **Q.** Do you have any of the publishing  
 18 contracts between your husband and Sage Publishing?  
 19 **A. I am sure I do.**  
 20 **Q.** Have those been provided to your Counsel  
 21 in this case?  
 22 **A. No.**  
 23 **Q.** But you know where they are roughly?  
 24 **A. Yes.**  
 25 **Q.** You would be able to provide them?  
 DIAMOND REPORTING, INC. - info@diamondreporting.com  
 718.624.7200

1 **A. Yes.**  
 2 **Q.** But sitting here today, you can't tell me  
 3 exactly what the terms of those contracts were without  
 4 looking at them; is that right?  
 5 **A. I could tell you that they are contracts**  
 6 **that any academic would be pleased to have.**  
 7 MR. GRATZ: No further questions.  
 8 THE WITNESS: Thank you.  
 9 (Whereupon, 3:55 P.M. the Examination of this  
 10 Witness was concluded.)  
 11  
 12  
 13  
 14 \_\_\_\_\_  
 15 BETTY MILES  
 16  
 17 Subscribed and sworn to before me  
 18 this \_\_\_\_ day of \_\_\_\_\_ 2012.  
 19  
 20 \_\_\_\_\_  
 21 NOTARY PUBLIC  
 22  
 23  
 24  
 25 DIAMOND REPORTING, INC. - info@diamondreporting.com  
 718.624.7200



## EXHIBITS

## MILES EXHIBITS:

EXHIBIT NUMBER	EXHIBIT DESCRIPTION	PAGE
1	Notice of Deposition	4
2	A page from the book called The Real Me	23
3	A page from the book called Goldilocks And The Three Bears	27
4	A description of the book Goldilocks And The Three Bears	29
5	A display of a partial page from Just The Beginning	35
6	The book titled Just The Beginning	37
7	The book titled The Trouble With Thirteen	42
8	Web pages consisting of nine pages	43
9	Two-page document titled Betty Miles - Out-Of-Print Titles and In-Print Status Unknown	55
10	Letter dated December 5, 1995 to Betty Miles from Alfred A. Knopf	77
11	Letter from Amy Nathanson from Random House to Betty Miles dated July 24, 1995	79
(Exhibits continue on next page)		

DIAMOND REPORTING, INC. - info@diamondreporting.com  
718.624.7200  
97

## CERTIFICATE

STATE OF NEW YORK )  
: SS.:  
COUNTY OF RICHMOND )

I, DEBORAH GARZANITI, a Notary Public for and  
within the State of New York, do hereby certify:  
That the witness whose examination is  
hereinbefore set forth was duly sworn and that such  
examination is a true record of the testimony given by  
that witness.

I further certify that I am not related to any  
of the parties to this action by blood or by marriage  
and that I am in no way interested in the outcome of  
this matter.

IN WITNESS WHEREOF, I have hereunto set my hand  
this 6th day of January 2012.

-----  
DEBORAH GARZANITI

DIAMOND REPORTING, INC. - info@diamondreporting.com  
718.624.7200  
99

## MILES EXHIBITS:

EXHIBIT NUMBER	EXHIBIT DESCRIPTION	PAGE
12	Letter dated February 28, 1996 to Betty Miles from Random House	82
13	An article bearing Bates number P-Miles-025	83
14	E-Mail from the Authors Guild to Betty Miles of September 23, 2005	87

## INDEX

EXAMINATION BY	PAGE
MR. GRATZ	3, 94
MR. BONI	93

DIAMOND REPORTING, INC. - info@diamondreporting.com  
718.624.7200  
98

B. MILES

## 1 C E R T I F I C A T E

2

3 STATE OF NEW YORK )  
4 COUNTY OF RICHMOND ) : SS.:

5

6

7 I, DEBORAH GARZANITI, a Notary Public for and  
8 within the State of New York, do hereby certify:

9 That the witness whose examination is  
10 hereinbefore set forth was duly sworn and that such  
11 examination is a true record of the testimony given by  
12 that witness.

13 I further certify that I am not related to any  
14 of the parties to this action by blood or by marriage  
15 and that I am in no way interested in the outcome of  
16 this matter.

17 IN WITNESS WHEREOF, I have hereunto set my hand  
18 this 6th day of January 2012.

19

20

21

22

23

24

25

  
DEBORAH GARZANITI